



World Bank Administrative Tribunal

2020

Decision No. 633

**Sebnem Sahin,
Applicant**

v.

**International Bank for Reconstruction and Development,
Respondent**

**World Bank Administrative Tribunal
Office of the Executive Secretary**

**Sebnem Sahin,
Applicant**

v.

**International Bank for Reconstruction and Development,
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Andrew Burgess (President), Mahnoush H. Arsanjani (Vice-President), Marielle Cohen-Branche (Vice-President), Janice Bellace, Seward Cooper, Lynne Charbonneau, and Ann Power-Forde.

2. The Application was received on 8 November 2019. The Applicant was represented by Peter A. Bair, Esquire. The Bank was represented by David Sullivan, Deputy General Counsel (Institutional Administration) Legal Vice Presidency.

3. The Applicant is challenging (i) the non-renewal of her contract which ended on 31 December 2017; (ii) the breach of promise of continuing employment which was to begin on 1 January 2018; and (iii) the breach of the Mediation Agreement.

FACTUAL BACKGROUND

4. The Applicant joined the Bank in March 2006 as a Short-Term Consultant (STC). Between 2006 and August 2012, the Applicant held multiple STC as well as Extended-Term Consultant appointments in various departments. On 24 August 2012, the Applicant was offered and accepted a coterminous Term appointment for one year as a Senior Environmental Economist, Level GG, in the Environment and Water Resources Unit. As explained by the Bank, coterminous appointments “are contingent on funding, e.g., positions that are 100 per cent funded from a trust fund.” The Applicant states that she has “a master’s degree in Modelling the Potential Economic Impacts of Climate Change and Sustainable Natural Resource Management” and “was one of the few macro-economic modelers at the Bank.”

5. On 1 October 2013, the Applicant's coterminous Term appointment was converted to a Term appointment and extended for one year as part of the Bank's 16 January 2013 announcement that it would be phasing out coterminous appointments. On 1 July 2014, the Applicant was mapped to the newly created Environment Global Practice (ENV GP). It may be noted here that the Bank explains that a Global Practice unit (GP)

provides technical cross-support to all regionals while the staff member keeps their organizational and professional mapping to their respective GPs. Technical staff in a GP are effectively "loaned out" to the regions on an as needed basis, who in turn, pay for the staff member's services during the time the staff is working on projects assigned to them by the region. In this way, regions benefit from the multiple technical skills available within a GP without having to add to their individual work force planning budget.

6. On 23 February 2015, the Applicant's Term appointment with the ENV GP was renewed for two years with an end date of 26 August 2017. On 1 January 2016, the Applicant was transferred to the South Asia unit within the ENV GP while maintaining the same appointment end date.

7. On 1 September 2016, the Applicant was transferred to the Global Public Goods unit within the ENV GP, again maintaining the same appointment end date. According to the Applicant, she was told by her then-Manager and Director that she "would have a better future there," and on that basis she accepted the move. The Applicant also states that, "[a]lthough formed as a suggestion, [she] knew that she had to take the new assignment."

8. On 14 February 2017, the Applicant met with her new Manager, her Practice Manager, and the ENV GP Human Resources (HR) Business Partner. In this meeting, the Applicant was informed that her contract would not be extended and would terminate on 26 August 2017 according to its terms. The Applicant was told that

the rationale for not extending her contract was twofold: (a) the ENV GP did not have a sufficient work program that required Applicant's highly specialized skills and expertise; and (b) because of strict headcount constraints, the unit needed more safeguard specialists at that time. As a result, there were no longer business needs for Applicant's skills within ENV GP and her position was not part of the staffing plans moving forward.

9. On the following day, 15 February 2017, the Applicant received written notice from her Manager of the non-extension decision.

Mediation and Alleged Promise

10. Following the notice of non-extension, the Applicant requested mediation in order to negotiate an extension of her appointment.

11. At the same time, the Applicant began seeking work in other units. In March 2017, the Applicant was assigned by her Manager to support the Regional Reconstruction Program led by the Senior Advisor to the Vice President of the Middle East and North Africa Region (MNA VP). As explained by the Bank, this is a typical arrangement in which the “budget to fund specific tasks is provided by the regions whereas the technical staff is provided by the GPs.” After beginning this work, the Applicant reached out to the Senior Advisor to explore opportunities to be hired by the MNA Vice Presidential Unit (VPU).

12. According to the Applicant, the Senior Advisor told her multiple times between March and June 2017 that the MNA VP was impressed with her work and would hire her to work for the MNA VPU. On 27 June 2017, the Senior Advisor emailed the MNA VP, writing:

As discussed earlier regarding the strategic reassignment of [the Applicant] (Sr. Environmental Economist), [other colleagues] have been informed and welcomed the idea.

I would be grateful if you could send an email (see draft below) to the following persons, [the Applicant’s Manager and Director,] to request [the Applicant’s] release from their unit. They have been consulted and have agreed to the request.

[The Applicant] will be either mapped to Regional Reconstruction or Regional Programs as of July 1, 2017.

13. On the same day, the MNA VP replied to the Senior Advisor, copying the MNA HR Business Partner, and wrote that he was forwarding the email to the HR Business Partner “so that he can do whatever is needed.” The Applicant was not copied on these emails, but the Senior

Advisor forwarded them to her the same day. The Applicant claims that, “[a]s a result of this email, [she] believed [she] had secured a two-year staff contract with [MNA].”

14. After receiving the email from the MNA VP, the HR Business Partner forwarded it to the MNA Director, asking, “Is this an approval from [the MNA VP]? Please advise if we should proceed or not.” The MNA Director responded on 1 July 2017, stating:

Please do not proceed.

[...]

From your side could you please help me by responding that it is not in our strategic staffing. It should be considered in the workforce planning based on affordability. We have returning staff to manage and consider. For now [the Applicant] can work on a cross support or WPA [Work Program Agreement] basis.

15. On 2 July 2017, the MNA HR Business Partner followed up with the MNA Director, bringing her attention to the MNA VP’s instruction to “do whatever is needed.” She responded, stating, “[Whatever] is needed’ means follow the process!!” On the same day, the MNA HR Business Partner emailed the Senior Advisor, explaining:

As you may know, we are in the middle of the strategic staffing plan and I mentioned to you in our brief chat the other day, this request will be included into the requests to be reviewed as it would translate into a net additions to the region and specifically to the [VP’s Front Office]; in addition, budget will need to be secured before we can [proceed].

I understand that you need to make a quick decision as [the Applicant’s] appointment is ending shortly with her current unit, but the thing is that we will need to follow the staff planning process and ensure that all the basis (staffing headroom and budget affordability) are covered.

16. Throughout this time the Applicant continued mediation with her Manager regarding an extension of her contract. On 1 August 2017, the Applicant emailed the Senior Advisor, who was not a party to the mediation, attaching the draft Mediation Agreement which was being negotiated with her Manager, and writing:

Thanks for offering to write to [my Manager] about my contract extension... I am sharing hereby my contract extension with [my Manager].

Based on my recent discussion with the HR, we would need to add to the attached agreement on my contract extension that I would have a staff position in MNA VP office by the end of this calendar year.

Anybody from [the MNA HR Business Partner's] team would have the authority to add this clause to the attached document.

17. The same day, the Senior Advisor replied to the Applicant, copying her Manager, the Mediator, the Staff Association representative, the ENV GP HR Business Partner, and the MNA HR Business Partner (hereinafter the Senior Advisor's 1 August 2017 email), writing:

With reference to the attached [Mediation Agreement] draft, please note that [the Applicant] has been working on part time basis with the reconstruction team in [MNA], as agreed with her manager since March 2017, and she will continue to work with us on the same basis until January 2018. Then she will be working full time as part of the editorial team and CGE [Computable General Equilibrium] modeler for the forthcoming publication [...]. Please add this information to the attached [draft] agreement.

In his testimony before Peer Review Services (PRS), the Senior Advisor explained that he and the Applicant "thought that sending an email confirmation to [Mediation Services] stating that [the Applicant] would have funding for 18 (eighteen) to 24 (twenty-four) months would help ENV GP to extend [the Applicant's] Appointment for that period." The Senior Advisor also stated that he did not consult the MNA VP, the MNA Director, or the MNA HR Business Partner before sending the email.

18. In response to this email, the Manager emailed the Mediator, asking "[w]hy a confidential agreement is being shared with a third party" and stating, "I don't think this is appropriate at all, and raises serious governance concerns in my view." The Mediator responded the next day, explaining that she had met with the Applicant and the Staff Association representative and that the Applicant would sign the draft Mediation Agreement. The language suggested by the Senior Advisor was not included in the Mediation Agreement intentionally as the Manager did not agree to it.

19. On 3 August 2017, the MNA VP emailed the Senior Advisor, copying the MNA Director, writing, “Is there any reason why [the Applicant] cannot remain GP staff and work for us 100% of the time and we at the GP [pay] her full salary? That would be the best arrangement for her career wise.” The Senior Advisor responded, writing:

As you may recall, we had agreed to hire [the Applicant] for our Reconstruction team in MNA.

On June 27, you instructed [the MNA HR Business Partner] to do what was necessary to bring [the Applicant] on board, so that she is employed in MNA before the expiration of her contract with [the ENV GP] on August 27.

HR informed me that they did not have clearance on the matter, so I am referring back to you. We need your help in working with [the MNA HR Business Partner] to find a suitable arrangement before [the Applicant’s] contract’s expiration on August 27. During our resource planning meeting you were very specific about not increasing region staff beyond the 221 limit, which makes a lot of sense. My understanding [is] that [the Applicant] would be part of the 221 not an addition. [The MNA Director] was of the opinion that we don’t “transfer” additional staff to the front office, rather “pay” for their services from other GPs or CMUs [Country Management Units].

[The Applicant] has been supporting me extensively, in agreement with her manager, and she proved extremely beneficial in our work on Yemen, Libya and Iraq. [The Applicant] will be working full time on [MNA’s] flagship publication for the next 24 months, and we should be able to have enough funds to cover her staff costs. So, in principle, we could use [the Applicant’s] inputs without transferring her to the front office. [The Applicant] will still need a “home” at the Bank, maybe one of our CMUs, or maybe the “regional programs” unit.

The Applicant was not copied on these emails.

20. Also on 3 August 2017, the Senior Advisor emailed the Applicant’s Manager, asking if he would consider keeping the Applicant’s position in the ENV GP if she was “funded 100% by MNA.” The Manager replied the next day, stating that the ENV GP had “reached an agreement to extend [the Applicant’s] contract [until] December 31, 2017” and clarifying that, “[b]etween now and December, she could work and be paid [by MNA]” but that, “[n]evertheless, a solution to [the Applicant’s] employment opportunities remains to be found.”

21. On 18 August 2017, the Senior Advisor emailed the Lead Economist in the MNA Chief Economist Office, copying the MNA VP, the MNA Director, the MNA HR Business Partner, and the Acting MNA Chief Economist, explaining that he had talked to the Acting MNA Chief Economist about moving the Applicant to the MNA Chief Economist Office and that the MNA VP

has already agreed to fund her for 2 years from the VPU budget [...], but she needs a “home” since [ENV GP] no longer needs her technical skills, and gave her a mediation agreement to leave the Bank by 31st December 2017.

The Senior Advisor forwarded this email to the Applicant the same day.

22. The Lead Economist replied, indicating that she would be supportive of the arrangement. The MNA Director then responded, inquiring whether the position was in the Fiscal Year 2018 (FY18) strategic staffing submission and copying the MNA HR Regional Lead. The MNA HR Regional Lead then responded, stating, “There is no vacant position in the Chief Economist or in the VP [Front Office] units to accommodate level GG staff member in the recently submitted FY18 strategic workforce plan for [MNA].” The Applicant was not a party to these emails.

23. Also on 18 August 2017, the Applicant signed the Mediation Agreement, which provided that “all parties have read, fully understand and accept all terms in this Agreement.” The Applicant claims that she signed the Mediation Agreement “in good faith, assuming this provision regarding continuing employment [with MNA] would be in it.” On 23 August 2017, the Applicant’s Manager signed the Mediation Agreement on behalf of the Bank.

24. The Mediation Agreement provides:

1. The World Bank agrees to extend [the Applicant’s] employment contract until December 31, 2017. This will be her final extension of her current position and she will receive no further notification(s) and this Agreement constitutes due notice of employment termination and no further notice will be expected or required. Unless [the Applicant] is selected to a Term or Open appointment and transfers to that appointment prior to December 31, 2017, her last day of employment will be December 31, 2017 and she will terminate effective January 1, 2018.

[...]

5. [The ENV GP Senior Director] will serve as the point of contact in assisting [the Applicant's] job search and will actively facilitate her move to a new position, should [the Applicant] be selected for, and transferred to, a term or open ended appointment before December 31, 2017.

[...]

7. In the event [the Applicant] finds employment either by job advertisement or by strategic reassignment, the World Bank will support her move to a new position prior to December 31, 2017. [...] [The Applicant's] name shall be submitted for a rotation assignment through bilateral agreement with another Bank unit. [The Applicant's Manager] will fully support and advocate for [the Applicant's] selection for such assignments and continued career development should such a rotation program occur.
8. Additionally, in the event a Global Practice of the EFI [Equitable Growth, Finance and Institutions] Practice Group (or any other World Bank unit) offers [the Applicant] a Developmental Assignment between the time of signing and December 31, 2017, [the Applicant's Manager] and the [ENV GP] will support it, without implying any further extension of this agreement.

25. In addition to extending the Applicant's employment contract, the Mediation Agreement also provided that the Applicant would be given "time to search for other employment, take training, and receive coaching/mentoring" and be assigned a mentor to assist her with her job search and work assignments.

26. The Mediation Agreement also included a release clause:

Release: This Agreement constitutes a complete and final settlement of all issues described above. The parties agree to release all claims related to those issues which occurred on or before the date of this Agreement. The parties agree to refrain from any future legal or administrative actions regarding events related to the issues resolved here, except for purposes of enforcing the terms of this agreement. [Staff Member] agrees to withdraw any related claims, request or case pending at PRS, AR [Administrative Review], PMR [Performance Management Review], or WBAT [World Bank Administrative Tribunal].

27. After signing the Mediation Agreement, the Applicant continued her work with MNA through the remainder of her contract. According to the Bank, in September 2017 the MNA

Director met with the Applicant to inform her that the MNA Work Force Plan for the upcoming fiscal year had not been endorsed by senior management and, as a result, MNA would not be advertising any positions except for country managers and resident representatives.

28. On 3 October 2017, the Applicant emailed the MNA VP asking for assistance with her career continuity. According to the Applicant, on 8 October 2017, the MNA VP verbally told her to “find a home somewhere in the Bank, and I will pay your salary.”

29. According to the Applicant, from October to December 2017, the Senior Advisor sent several emails to non-MNA managers trying to find the Applicant a “home” but was unsuccessful. The Applicant likewise continued looking for job opportunities.

30. On 12 December 2017, the Applicant emailed an International Finance Corporation (IFC) Chief Economist, inquiring about a Developmental Assignment with his team. The IFC Chief Economist responded, indicating that his unit would be interested in the Developmental Assignment.

31. On 14 December 2017, the Applicant met with the MNA Director and asked her to call her Director in the ENV GP to request an extension of her contract. The Applicant claims that, during this conversation, the MNA Director discouraged her from applying to a GF-level economist position in MNA. The Bank claims that the Applicant was encouraged to apply for this position but that she refused. The MNA Director emailed the Applicant a few days later, indicating that she had spoken to the Applicant’s Director but that there was no possibility of extending the Applicant’s contract.

32. On 15 December 2017, the Applicant met with her Mentor to seek advice. Her Mentor advised her to reach out to the VP of the Sustainable Development Network to ask for a contract extension. On 18 December 2017, the VP of the Sustainable Development Network responded to the Applicant’s request, stating:

I followed up on your e-mail and learned that you signed a mediation agreement with the World Bank on August 18, 2017. As I’m sure you are aware, this

agreement constitutes a complete and final settlement of all issues related to the non-renewal of your term contract which is due to end on December 31, 2017.

As I'm sure you also know, mediation agreements are binding, as parties are expected to carry out the terms as stated in the signed document. As a result, I don't think it is proper for me to interfere or express a view on an issue that has already been resolved through the Bank's internal justice system.

33. According to the Applicant, on 21 December 2017, she met with the IFC Chief Economist to discuss the Developmental Assignment. The Applicant claims that the IFC Chief Economist asked his VP to contact the ENV GP Senior Director to request an extension of the Applicant's contract. According to the Applicant, the ENV GP Senior Director refused to extend her contract further.

34. On 31 December 2017, the Applicant's appointment ended.

Peer Review Services

35. On 20 January 2018, the Applicant filed Request for Review No. 415 with PRS. The Applicant requested review of "(i) Breach of '[her] original contract with the [Bank] dated August 24, 2012 where the [Bank] will employ [her] as long as there is funding' (Alleged Breach of Contract); and (ii) Breach of a promise of 'a [two-year] full-time job in [MNA]' starting January 1, 2018 (Alleged Breach of Promise)."

36. On 17 May 2019, the PRS Panel dismissed the breach of contract claim, explaining that, because the Applicant's coterminous appointment was converted to a Term appointment in 2013, the reliance on available funding was no longer relevant. The PRS Panel concluded that there was no binding promise made to the Applicant regarding a two-year position in MNA, and that there was no evidence of bad faith in connection with the alleged breach of promise. The PRS Panel did find, however, that the Applicant "was reasonably led to believe that her employment with the [Bank] would be extended beyond December 2017 due to character and circumstances surrounding [the Bank's] communications and actions." The PRS Panel concluded that "the lack of accurate, open, transparent and timely communication with [the Applicant] about her future employment

with MNA constituted unfair and improper treatment.” The PRS Panel therefore recommended that the Applicant be compensated in the amount of six months’ salary.

37. On 5 June 2019, the Bank’s Chief Executive Officer accepted the PRS Panel’s recommendations. On 17 June 2019, the Applicant was paid as recommended by the PRS Panel.

The Present Application

38. The Applicant filed the present Application with the Tribunal on 8 November 2019. She challenges (i) the non-renewal of her contract which ended on 31 December 2017; (ii) the breach of promise of continuing employment which was to begin on 1 January 2018; and (iii) the breach of the Mediation Agreement.

39. The Applicant requests the following relief: (i) reinstatement as a Senior Economist on an open-ended contract; (ii) two years’ salary and benefits in addition to reinstatement; (iii) additional compensation for the Bank’s “bad faith, arbitrary and capricious behavior, lack of candor, breach of promise of employment, breach of mediation agreement, and violation of Staff Rules and Principles of Staff Employment”; and (iv) legal fees and costs in the amount of \$25,000.00.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant’s Contention No. 1

The Mediation Agreement was not valid and binding, and the Bank breached the Mediation Agreement

40. The Applicant contends that the Mediation Agreement “was not valid and binding on [her] because it did not contain the terms that [she] was clearly promised would be in it.” The Applicant submits that she signed the Mediation Agreement believing that the terms in the Senior Advisor’s 1 August 2017 email would be added.

41. The Applicant next contends that the Bank breached paragraph 7 of the Mediation Agreement, which provided that her Manager would support her in the event she found new employment within the Bank. The Applicant submits that the Bank breached this provision when various Bank employees refused to extend her contract further while she attempted to find other employment.

42. In response to the Bank's contention that the Mediation Agreement constitutes a full and final settlement of her claims, the Applicant avers that the Mediation Agreement was incomplete and that it had been breached. The Applicant also contends that the Mediation Agreement Release does not apply to her claim that there was a breach of promise, as the breach of promise occurred after the Mediation Agreement was signed and the relevant parties were not involved with the mediation.

The Bank's Response

The Mediation Agreement is valid and has been fully complied with, and the Mediation Agreement constitutes a full and final settlement of all the Applicant's claims

43. The Bank contends that the Applicant signed the Mediation Agreement "freely and with full knowledge of its contents." The Bank submits that the Applicant "cannot now claim she did not know or did not understand what she was agreeing to" and that her "claim that the Agreement is invalid because it failed to contain a clause she wished had been included in the Agreement cannot stand."

44. The Bank further contends that the Applicant's claims that the Bank breached the Mediation Agreement are "unsubstantiated and contradicted by Applicant herself." The Bank notes that the Applicant acknowledges the multiple emails written on her behalf to attempt to secure a new position for her. The Bank submits that "[u]nsuccessful attempts at securing a new appointment for Applicant [do] not constitute a breach of the Agreement." The Bank notes that the Mediation Agreement provided that the ENV GP would support a Developmental Assignment "without implying any further extension of this agreement," and that such an assignment only materialized in December 2017. The Bank contends that this Developmental Assignment could

not have been approved without extending the Applicant's appointment contrary to the terms of the Mediation Agreement.

45. The Bank finally contends that the Mediation Agreement constitutes a full and final settlement of all the Applicant's claims, noting the Release clause at the end of the Mediation Agreement. The Bank submits that the language of the Release is "clear and precise" and that the Tribunal should give effect to its terms. To the Bank, the Mediation Agreement "clearly and unquestionably resolves any and all issues regarding the non-renewal of Applicant's Term appointment." The Bank also contends that, by signing the Mediation Agreement, the Applicant released the Bank from claims relating to the alleged promise of a two-year extension, as the alleged promise occurred before the signing of the Mediation Agreement.

The Applicant's Contention No. 2

The Bank acted in bad faith, the non-extension of the Applicant's contract was an abuse of discretion, and there was a lack of candor and fairness

46. The Applicant claims that "[v]irtually everything that happened from February to December 2017 was done in bad faith, which includes abuse of discretion and lack of candor and fairness." The Applicant contends that the non-extension of her contract was an abuse of discretion, claiming that there is "no evidence of legitimate business considerations" for the decision. The Applicant suggests that the Bank's contention that her contract was not extended due to headcount constraints is unfounded because, according to the Applicant, the ENV GP hired another Senior Economist after she departed. The Applicant further submits that "[n]othing about [her] experience involved proper process" and states that she was "misled, lied to, and not supported by people whose duties required it."

The Bank's Response

The decision not to extend the Applicant's Term appointment was within managerial discretion

47. The Bank contends that the decision not to extend the Applicant's appointment was within managerial discretion, had a reasonable and observable basis, and was based on legitimate business

considerations. The Bank submits that it treated the Applicant fairly by granting her an additional four months of employment so she could secure another position and by making a good faith effort to help the Applicant in this regard.

The Applicant's Contention No. 3

There was a breach of promise

48. The Applicant contends that the 27 June 2017 email exchange between the Senior Advisor and the MNA VP constituted an offer for a two-year position in MNA. The Applicant submits that the Senior Advisor's 1 August 2017 email and the email exchanges of 3 August 2017 and 18 August 2017 further prove that she "had the promise of two years employment beginning January 1, 2018." The Applicant further submits that the 8 October 2017 conversation with the MNA VP also proves that there was a promise of a position in MNA. Regarding the breach of promise, the Applicant claims:

[The MNA VPU] advertised an economist position in November 2017 while I was seeking employment opportunities. I was discouraged by [the MNA Director] from applying for this position in our meeting on December 14. In December, I learned that I had the possibility to work with IFC and no one assisted me in making this a reality, a breach not only of their promises but of the August 18 mediation agreement in which they were bound to support me if and when I found new work.

The Bank's Response

There was no promise made

49. The Bank contends that the emails on which the Applicant relies do not constitute a legally valid promise made to the Applicant either expressly or by unmistakable implication that she would be reassigned to MNA. The Bank submits that the referenced emails demonstrate an effort on the part of the Senior Advisor to find the Applicant a "home" within the Bank, but that there was simply no position available for the Applicant. The Bank notes that the Applicant was not the intended recipient of the emails on which she relies, and contends that the Senior Advisor forwarded the Applicant the emails to demonstrate his good faith efforts to help her. The Bank states that the Applicant "never received an email, or other form of communication specifically

and unequivocally offering her a position in MNA from anyone with the proper authority to hire personnel.”

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

WHETHER THE MEDIATION AGREEMENT IS VALID, WHETHER IT WAS BREACHED, AND WHETHER IT CONSTITUTES A FULL AND FINAL SETTLEMENT OF THE APPLICANT’S CLAIMS

Validity of Mediation Agreement

50. The Tribunal will first consider the Applicant’s challenge to the validity of the Mediation Agreement on the basis that it did not include the terms included in the Senior Advisor’s 1 August 2017 email.

51. The Tribunal recalls that mediation “is considered to be a voluntary remedy” and that “[p]arties to a mediation start the process consensually and are not compelled to conclude agreements.” *Rittner*, Decision No. 335 [2005], para. 36; *EY*, Decision No. 600 [2019], para. 136. However, the Tribunal “has consistently held that an agreement signed between the Bank and a staff member ‘represents a binding commitment for the parties.’” *EY* [2019], para. 138, citing *BV*, Decision No. 466 [2012], para. 41.

52. In *Nyambal (No. 2)*, Decision No. 395 [2009], para. 22, the Tribunal considered a challenge to the validity of a mediated agreement, noting:

The Tribunal has also remarked, after reiterating the importance of compromise in the context of agreed settlements, that “no release or settlement of claims should be given effect if concluded under duress” (*Mr. Y*, Decision No. 25 [1985], para. 32; *T*, Decision No. 376 [2007], para. 44). The essence of any such agreement is that the parties negotiate and conclude them as an expression of their own free will; they are not imposed on the staff member under duress, and any such circumstance would have to be specifically proven. A change of mind after reconsideration does not evidence duress.

The Tribunal further explained that it has “consistently refused to invalidate release agreements on the basis of dissatisfaction on the part of the staff member which may have been acute, but does not amount to duress either in a legal or a moral sense.” *Nyambal (No. 2)* [2009], para. 23.

53. In *DC (Preliminary Objection)*, Decision No. 525 [2015], para. 63, citing *Malekpour*, Decision No. 322 [2004], para. 29, the Tribunal remarked, “To succeed in his claims [challenging the validity of an agreement,] the Applicant must provide convincing evidence since ‘an allegation is not a substitute for proof.’”

54. As the Tribunal observed in *Kehyaian (No. 2)*, Decision No. 130 [1993], para. 26:

In all cases of release agreements the staff member is assumed to have balanced the benefits resulting from the different options he or she has, and finally to have decided to consent to the proposed agreement. In each case the staff member must have been under certain pressures leading him to opt for what appeared to him to be the more advantageous alternative. This kind of pressure is inherent in the process and cannot be treated as by itself constituting duress. The fact that the Applicant’s counsel took part in negotiating the terms of the agreement and finally conveyed to the Respondent that these terms were accepted by the Applicant shows clearly that the Applicant’s acquiescence in the release agreement was a free and considered choice.

55. At the outset, the Tribunal notes that the Applicant is not alleging that the Mediation Agreement was concluded under duress. Rather, the Applicant contends that the Mediation Agreement “was not valid and binding on [her] because it did not contain the terms that [she] was clearly promised would be in it.” The Applicant submits in her Application that she signed the Mediation Agreement believing that the terms in the Senior Advisor’s 1 August 2017 email would be added. The Applicant further states, however, that “[s]he knew what she was signing, she is not a fool.”

56. The record demonstrates that, after she received the draft Mediation Agreement on 1 August 2017, she forwarded the draft to the Senior Advisor, writing:

Thanks for offering to write to [my Manager] about my contract extension... I am sharing hereby my contract extension with [my Manager].

Based on my recent discussion with the HR, we would need to add to the attached agreement on my contract extension that I would have a staff position in MNA VP office by the end of this calendar year.

Anybody from [the MNA HR Business Partner's] team would have the authority to add this clause to the attached document.

After receiving this email, the Senior Advisor emailed the Applicant, copying the Mediator and parties to the mediation, writing:

With reference to the attached [Mediation Agreement] draft, please note that [the Applicant] has been working on part time basis with the reconstruction team in [MNA], as agreed with her manager since March 2017, and she will continue to work with us on the same basis until January 2018. Then she will be working full time as part of the editorial team and CGE modeler for the forthcoming publication [...]. Please add this information to the attached [draft] agreement.

57. The record further shows that the Applicant's Manager objected to the confidential draft Mediation Agreement being shared with a third party. In response, on 2 August 2017, the Mediator emailed the Manager, writing:

I just concluded meeting with [the Applicant] and [her Staff Association representative], the good news is that she will sign the agreement sent to you on August 1, 2017 [...].

I appreciate your comments about including an outside party to the mediation on the mediation agreement. Without going into too much detail, that was discussed with [the Applicant], as well as the concerns you expressed. I don't think it was an attempt to undermine the mediation process we engaged in. Hopefully, we can move forward.

Following these exchanges, the Mediation Agreement was signed by the Applicant on 18 August 2017 and the Bank on 23 August 2017.

58. The Tribunal recalls that "the staff member is assumed to have balanced the benefits resulting from the different options he or she has, and finally to have decided to consent to the proposed agreement." *Kehyaian (No. 2)* [1993], para. 26. As the Applicant stated, "[s]he knew what she was signing, she is not a fool." With respect to the Applicant's assertion that she expected the proposed terms to be added after signing, the Tribunal notes that the Applicant's Manager,

representing the Bank in the mediation, did not agree to add the proposed terms, and, as such, the proposed terms were properly excluded from the Mediation Agreement. The Applicant's unilateral expectation that additional terms would be added after signing the Mediation Agreement does not change the terms of the Mediation Agreement which she signed.

59. While the Tribunal recognizes that the Applicant is now dissatisfied with the terms of the Mediation Agreement, such dissatisfaction does not invalidate an agreement that was consented to as "a free and considered choice." The Tribunal finally notes that, in signing the Mediation Agreement, the Applicant confirmed that she read, fully understood, and accepted all the terms as written in the Mediation Agreement. The Tribunal therefore upholds the validity of the Mediation Agreement.

Alleged Breach of Mediation Agreement

60. The Tribunal will next consider the Applicant's contention that the Bank breached the Mediation Agreement with regard to paragraphs 7 and 8. The Tribunal observes that the Mediation Agreement provides:

7. In the event [the Applicant] finds employment either by job advertisement or by strategic reassignment, the World Bank will support her move to a new position prior to December 31, 2017. [...] [The Applicant's] name shall be submitted for a rotation assignment through bilateral agreement with another Bank unit. [The Applicant's Manager] will fully support and advocate for [the Applicant's] selection for such assignments and continued career development should such a rotation program occur.
8. Additionally, in the event a Global Practice of the EFI Practice Group (or any other World Bank unit) offers [the Applicant] a Developmental Assignment between the time of signing and December 31, 2017, [the Applicant's Manager] and the [ENV GP] will support it, without implying any further extension of this agreement.

61. The Applicant claims that the Bank breached the Mediation Agreement when management refused to extend her contract after she had found a Developmental Assignment in December 2017. The Tribunal notes that the Mediation Agreement requires that the Bank support a Developmental Assignment "*without implying any further extension of this agreement.*" (Emphasis added.) The

Tribunal finds that the refusal to extend the Applicant's contract in December 2017 to accommodate the Developmental Assignment was not a breach of the Mediation Agreement, as the Bank was not obligated to extend the Applicant's appointment further than provided for in the Mediation Agreement. The Tribunal also considers that the record shows that efforts were made on the Applicant's behalf to secure an alternate position for her, noting in particular the efforts of the Senior Advisor and the MNA Director who reached out to other units on the Applicant's behalf. While efforts to assist the Applicant's job search were ultimately unsuccessful, the Tribunal finds that the Bank fulfilled its obligations under the Mediation Agreement.

62. The Tribunal further notes that the Mediation Agreement provides, "Unless [the Applicant] is selected to a Term or Open appointment and transfers to that appointment prior to December 31, 2017, her last day of employment will be December 31, 2017 and she will terminate effective January 1, 2018." The record reflects that the Applicant was not selected to a Term or Open appointment prior to 31 December 2017; therefore, her contract terminated according to the terms of the Mediation Agreement.

63. In light of these considerations, the Tribunal finds that the Bank did not breach the Mediation Agreement.

Scope of Release

64. The Tribunal will finally consider whether the Mediation Agreement constitutes a full and final settlement of the Applicant's claims, as contended by the Bank. The Mediation Agreement provided that it constituted a "complete and final settlement of all issues described above" and that the "parties agree to release all claims related to those issues which occurred on or before" the date of the Mediation Agreement.

65. In *CE (Preliminary Objection)*, Decision No. 479 [2013], para. 42, the Tribunal explained that it "has long accepted that staff members may release claims and waive recourse to the Tribunal," citing *Mr. Y* [1985]; *Kirk*, Decision No. 29 [1986]; *Gamble*, Decision No. 35 [1987].

66. In *Mr. Y* [1985], para. 26, the Tribunal remarked:

It would unduly interfere with the constructive and efficient resolution of [...] claims if the Bank could not negotiate – in exchange for concessions on its part – for a return promise from the staff member not to press his or her claim further. If such an agreed settlement were not binding upon the affected staff member, there would be little incentive for the Bank to enter into compromise arrangements, and there might instead be an inducement to be unyielding and to defend each claim through the process of administrative and judicial review.

67. In *DC (Preliminary Objection)* [2015], para. 70, the Tribunal explained:

[T]he specifics of a waiver are binding only if they are express or can be clearly implied from its terms. In interpreting waiver clauses, the Tribunal looks at the “plain, ordinary and generally accepted meaning of the words used.” *BU*, Decision No. 465 [2012], para. 33. The Tribunal is “mindful of the fact that many courts take a cautious approach to upholding waivers of employment rights, in light of presumed unequal bargaining power, and the importance of certain rights.” *CE*, Decision No. 479 [2013], para. 49. It therefore takes into account the circumstances surrounding the negotiations, and whether the staff member was represented by legal counsel.

68. Having already established the validity of the Mediation Agreement and noting that the Applicant does not challenge the validity of the Release, the Tribunal will focus its analysis on the scope of the Release.

69. In this case, the Release provides that the Mediation Agreement constitutes a “complete and final settlement of *all issues described above*” and that the parties agree to “release all claims related to those issues which occurred on or before the date of this Agreement.” (Emphasis added.)

70. The Tribunal observes that the issues which formed the subject of the Mediation Agreement are noted under the subject line “Parties”: “This Agreement voluntarily resolves any and all issues between [the Applicant] and all World Bank [G]roup organizations, including the following issues.” Under the subject line “Issues,” the Mediation Agreement then lists “Proposed non-renewal of term contract.”

71. With respect to the Applicant's claims related to the non-extension of her contract, the Tribunal finds that these issues were clearly contemplated by the Mediation Agreement. Specifically, the Applicant contends that the Bank acted in bad faith, as the non-extension of her contract was an abuse of discretion and there was a lack of candor and fairness. To the Applicant, the Bank acted in bad faith when she was transferred to the Global Public Goods unit on 1 September 2016, since she was informed soon after the change that the unit had no work for her and therefore her contract would not be extended. The Applicant also contends that the non-extension decision was an abuse of discretion, as she claims that there is "no evidence of legitimate business considerations" for the decision. The Tribunal observes that these claims are directly related to the non-extension decision and thus concludes that they were settled by the Mediation Agreement.

72. The Tribunal recalls that "[i]t would unduly interfere with the constructive and efficient resolution of [...] claims if the Bank could not negotiate – in exchange for concessions on its part – for a return promise from the staff member not to press his or her claim further." *Mr. Y* [1985], para. 26. The Tribunal concludes that, in exchange for a four-month extension to her contract to facilitate the search for a new position, the Applicant has waived her right to challenge the non-extension decision and pursue the related claims before the Tribunal. The Tribunal therefore dismisses these claims.

73. The Tribunal will next consider whether the Applicant's claims related to the alleged promise also fall under the scope of the Release. In determining the scope of the Release, the Tribunal has explained that the "interpretation of the waiver clause must be based on the plain, ordinary and generally accepted meaning of the words used." *BU* [2012], para. 33. Although the Mediation Agreement specifies the non-renewal of the Applicant's contract as an issue resolved by the Mediation Agreement, the plain language indicates that the issues resolved are in fact much broader. In that regard, the Mediation Agreement states that it "resolves *any and all issues* between [the Applicant] and all World Bank [G]roup organizations." (Emphasis added.) The Release states that it applies to "all claims related to those issues which occurred on or before the date of this Agreement." From the plain language, the Tribunal considers that the scope of the Release is only limited by when the issue occurred in relation to the Mediation Agreement.

74. The Tribunal will determine, then, whether the alleged promise of a position with MNA occurred before the date of the Mediation Agreement. The Tribunal notes that the Applicant contends the alleged promise was expressed in the 27 June 2017 emails. Because the alleged promise was made prior to the signing of the Mediation Agreement, the Tribunal finds that the Applicant's claims fall under the scope of the Release. The Tribunal therefore concludes that the Applicant has waived her right to challenge the alleged promise before the Tribunal.

DECISION

The Application is dismissed.

/S/ Andrew Burgess
Andrew Burgess
President

/S/Zakir Hafez
Zakir Hafez
Executive Secretary

At Washington, D.C., * 16 November 2020

* In view of the public health emergency occasioned by the COVID-19 pandemic and in the interest of the prompt and efficient administration of justice, the Tribunal conducted its deliberations in these proceedings remotely, by way of audio-video conferencing coordinated by the Office of the Executive Secretary.